

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

APR 12 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2006-0432-PR
)	DEPARTMENT A
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
RALPH DAVID McCORMICK,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20002945

Honorable Leslie B. Miller, Judge

REVIEW GRANTED; RELIEF DENIED

Robert J. Hooker, Pima County Public Defender
By Lisa M. Hise

Tucson
Attorneys for Petitioner

PELANDER, Chief Judge.

¶1 A jury found petitioner Ralph David McCormick guilty of the first-degree murder of his wife Maria and arson of the burning rental car in which her body was found on August 28, 2000. The trial court sentenced him to life imprisonment for murder with the possibility of parole after twenty-five years and to a consecutive, aggravated three-year term for arson. We affirmed the convictions and sentences on appeal. *State v. McCormick*, No. 2 CA-CR 2002-0073 (memorandum decision filed Jan. 18, 2005).

¶2 McCormick then filed a notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S., and the trial court appointed counsel. In the petition that followed, McCormick asserted trial counsel had been ineffective in failing to challenge the state’s claim of premeditation by presenting expert testimony regarding the effects of alcohol consumption on memory. He also claimed his aggravated sentence for arson had been imposed in violation of *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004).

¶3 The trial court granted relief on McCormick’s *Blakely* claim and ordered a resentencing on his arson conviction. It denied relief on his ineffective assistance of counsel claim, giving rise to the present petition for review. We will not disturb the trial court’s ruling unless it has clearly abused its discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990).

¶4 Undisputed at trial was the fact that McCormick had admitted killing his wife with a baseball bat while he was intoxicated. At issue was whether the killing was premeditated or whether McCormick was instead guilty of second-degree murder or another lesser offense. He faults trial counsel for not having called an expert witness to challenge the reliability of McCormick’s recorded confession, arguing in conclusory fashion that “trial counsel’s failure to call an expert witness fell below the reasonable norms of practice, [satisfying] the first prong of the *Strickland* [*v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984)] test” for ineffective assistance of counsel.

¶5 In its response, the state countered that McCormick had not met his burden to show counsel’s failure to offer expert testimony was objectively unreasonable. The state

argued the proposed opinion testimony would not have been admissible and, if admitted nonetheless, would have been unhelpful and potentially even damaging to the defense. Noting defense counsel's many years of criminal trial experience, the state asserted that the failure to offer expert testimony of the sort described was not ineffectiveness by counsel but a strategic decision, "based on judgment and very likely knowledge of the law regarding the admissibility of expert testimony." Additionally, the state argued, McCormick had not shown a reasonable probability that the testimony proposed would have changed the outcome at trial.

¶6 An ineffective assistance of counsel claim has two required components: "a defendant must show that counsel's performance fell below objectively reasonable standards and [that] the deficient performance prejudiced the defendant." *State v. Febles*, 210 Ariz. 589, ¶ 18, 115 P.3d 629, 635 (App. 2005); *see also Strickland*, 466 U.S. at 692, 104 S. Ct. at 2067 (to violate Sixth Amendment, deficiencies in counsel's performance must have prejudiced defense). The trial court determined McCormick had shown neither that counsel's performance was deficient nor that the proposed expert testimony would have changed the jury's verdicts. The court stated:

Arizona law is clear that a claim of ineffective assistance cannot be based on a later determination of failed trial strategy. *State v. Valdez*, 160 Ariz. 9, 15, 770 P.2d 313, 319 (1989); *State v. Beaty*, 158 Ariz. 232, 762 P.2d 519 (1988).

Mr. McCormick was represented by very experienced counsel. The jury heard substantial evidence that defendant consumed an excessive amount of alcohol prior to the commission of the offense. The effects of excessive amounts of alcohol are within the common knowledge of jurors. *State v.*

Hicks, 133 Ariz. 64, 71, 649 P.2d 267 (1982). Whether or not an expert, who would have testified as suggested by defense counsel, would have been helpful to the defense is debatable. The decision not to have an expert testify on the issue was one of trial strategy and not one that can be found to be error by this Court.

¶7 Even assuming the trial court had no real basis for attributing the lack of expert testimony to trial strategy, the court concluded the proposed expert testimony was probably not admissible and was not reasonably likely in any event to have changed the jury's verdicts. Having presided over McCormick's trial, the judge was particularly well qualified to make that assessment. Because the trial court's minute entry clearly identifies, sufficiently analyzes, and correctly resolves McCormick's claim, we will not belabor it further. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has correctly ruled on issues raised "in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court['s] rehashing the trial court's correct ruling in a written decision").

¶8 We find no abuse of the trial court's discretion in summarily denying post-conviction relief. Although we grant the petition for review, we likewise deny relief.

JOHN PELANDER, Chief Judge

CONCURRING:

JOSEPH W. HOWARD, Presiding Judge

GARYE L. VÁSQUEZ, Judge